EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action
	)	
TROOPER VICTOR J. STERNBY,	)	No. 05-154
	)	
Defendant.	)	

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COUNSEL PRESENT:

For the Plaintiff: Kane & Silverman, P.C. by Steven C. Feinstein, Esq.

For the Defendant: Office of the Attorney General by Mary Lynch Friedline, Esq.

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DEPOSITION OF VICTOR STERNBY

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DEPOSITION OF VICTOR STERNBY

the Defendant herein, called by the Plaintiff for examination, taken pursuant to the Federal Rules of Civil Procedure, by and before Linda D. Hughes, a Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the Offices of the Attorney General, 6th Floor Manor Complex, Pittsburgh, Pennsylvania, on Tuesday, February 28, 2005, at 11:20 a.m.

ALSO PRESENT: William R. Bill

I N D E X

WITNESS: VICTOR STERNBY

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P R O C E E D I N G S

VICTOR STERNBY

the Defendant herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FEINSTEIN:

Q. Good morning, Trooper Sternby.
A. Sternby.
Q. I apologize. I am terrible with names, so I am going to get it wrong like 1,000 times. Please accept my apologies. There is no disrespect intended.

My name is Steven Feinstein. I represent William Robert Bill in his claim under a 1983 action that was brought as a result of an incident that took place on February 22, 2003, stemming from an arrest that you and your partner made of him for DUI on that night.

You are here for a deposition today. I am going to be asking you a series of questions. Has your deposition ever been taken before?

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A. In this case?

Q. No. Just generally. Has it ever been taken in any case?

A. I don't believe so.

Q. I am going to ask you a series of questions. It will make my job easier, your attorney's job easier and the court reporter's job easier if, first and foremost, you please allow me to finish asking my question before you begin to answer.

I ask that for two reasons. The young lady to the left is a court reporter. She cannot take down two people at the same time. It makes her job difficult. We want to make sure the transcript is clear.

The second thing is I want to make sure you have heard my entire question before answering to make sure you are answering the question I am asking. Please don't anticipate my question.

The second thing is please keep all your answers verbal. If the answer is yes, please say yes as opposed to a nod of the head or gesture. Similarly, try to stay away from things like uh-huh or um-hum. It may be clear to us today what you intended to say; but when we go back and look at the deposition, those two things sound too similar. If the answer is yes, please say yes as opposed to uh-huh.

Please stay away from guessing at the answers to questions. There may be things that you don't have a specific recollection of. It is perfectly fine to tell me that you don't remember or you don't know the answer to a question.

If you are estimating the answer to a question, please let me know it is an estimate so I take it in that vein as opposed to something as being a measurement of some kind.

I don't know how long we are going to be here. If at any time you want to take a break to consult with your attorney or to get a drink or use the rest room or anything along those lines, please let me know; and I will accommodate anything that is reasonable.

If you don't understand one of my questions, please let me know that. If you don't hear one of my questions, please let me know that as well. I will rephrase or repeat a question as many times as necessary until you are confident you have heard and understood the question. Are my instructions to you clear today?

A. Yes.

Q. Are you today under the influence of any medication or drugs which might affect your ability to remember the events of February 22, 2003?

A. No.

Q. Are you under the effects of any drugs or medication that might affect your ability to testify?

A. No.

Q. What is your first name, sir?

A. Victor.

Q. Victor Sternby; is that correct?

A. Yes.

Q. Who are you currently employed by?

A. Pennsylvania State Police.

Q. How old are you?

A. 40.

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Q. How long have you been with the Pennsylvania State Police?

A. Since January 7, 1991.

Q. So that is a period of just over 15 years?

A. Correct.

Q. Before that, where were you employed?

A. I had had several different jobs before that. Basically, self-employed immediately prior to my entering the Academy.

Q. Were any of your prior jobs law enforcement related?

A. No.

Q. Before you were hired by the Pennsylvania State Police, did you go through a training period?

A. Not before.

Q. So when you were hired, that is when they put you into the training period?

A. Yes.

Q. Is there an Academy of some kind that you go to?

A. Yes. I went to the Academy in

Hershey.

Q. You become employed by them before you go through the Academy and then you become a full-fledged trooper when you complete?

A. Correct.

Q. Are you under some sort of probationary period or anything while you are in the Academy?

A. Yes.

Q. Can you tell me what the training consists of at the Academy?

A. At the time I went I believe it was 23 weeks. They covered all the aspects of police work as far as Vehicle Code, Crimes Code, firearms training, physical fitness.

Q. When did you graduate from the Academy, do you remember?

A. I believe it was May 15, 1991.

Q. Do you get any kind of certificate or affidavit or diploma or something indicating that you graduated?

A. Yes, I believe we did.

Q. Do you get ranked in your class or

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is there any way to differentiate the better Academy students, for lack of a better term, than other people or whenever you graduate is it the same?

A. They have a small group of awards for like best firearms score or best academic score. I am not sure of any ranking that was made public of where exactly in the class you finished.

Q. Is it possible to be thrown out of the Academy while you are there?

A. Yes.

Q. What would be some of the circumstances that a person might be thrown out while they are in the Academy?

A. Illegal activities, infractions of the rules depending on the severity and how many times. We had people that were thrown out for having a point where they were possibly capable of receiving the minimum academic scores on the final in regards to how they did on the remainder of the test. They were situations like that.

Q. Is there a written test you are

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required to pass before you graduate from the Academy?

A. There are a series of written tests the entire time you are in the Academy, and then there is a final test shortly before graduation.

Q. What does that cover?

A. Everything that you had studied up until that point.

Q. When you graduate from the Academy, are you given a certain rank or position with the state police?

A. Just trooper.

Q. Are there different grades of trooper?

A. Not as of this time.

Q. Are you a trooper now?

A. Yes.

Q. Is it fair to say your position today is the same as your position was 15 years ago?

A. From the time I graduated the Academy until now, yes.

Q. There are positions above trooper;

correct?

A. Yes.

Q. They are officers?

A. Yes.

Q. What would those ranks be?

A. Corporal, sergeant, lieutenant, captain, major, lieutenant colonel, colonel.

Q. The colonel is the highest position in the state troopers?

A. Yes.

Q. I am sorry. The highest position in the state police but your answer is yes?

A. Yes.

Q. When you graduate from the Academy, are you on a probationary period of any kind?

A. Yes.

Q. How long does that probationary period last?

A. I believe that is a year.

Q. What is your understanding of what the probationary period means?

A. I am not real certain on that. I know it is a period where they follow your actions and your work to see if you are

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competent as a police officer, but I don't know the specifics of what all is involved or what they look at.

Q. Are you given some sort of formal indication that your probationary period is over and you are no longer under probation?

A. I don't recall anything. I remember somebody saying this is your last performance review or something, but I don't recall any type of certificate. There is no ceremony or anything.

Q. Between the time you graduated from the Academy and February 22, 2003, had there been any complaints for any disciplinary problems against you during that period of time?

A. Could you narrow that down a little bit more?

Q. Between the time you graduated from the Academy and February 22, 2003, did anybody ever file suit against you alleging that you had violated their civil rights?

A. Not that I am aware of.

Q. Between the time you graduated and

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February 22, 2003, did you ever receive any official reprimands for anything that you had done on the job?

A. Yes.

Q. Can you tell me how many times that took place?

A. It depends on exactly -- there are different levels of reprimands. We have a progressive punishment system.

It could start with a supervisor telling you, hey, don't do that again up to where they do a formal what is commonly known as internal affairs investigation where they would actually discipline someone.

I had one occasion where I was actually disciplined for a situation where I went to an under-age drinking party which was outdoors.

As we approached, the only people that were left at that party we were able to ascertain were over the age to be legally consuming alcoholic beverages.

It wasn't a loud party bothering the neighbors or anything like that, but later on one of the subjects got home that was under age, got caught by his parents, said that we were there and didn't do anything. They lodged a complaint, and they did an investigation on that.

Q. What kind of reprimand did you receive?

A. I believe I lost eight hours of vacation time.

Q. Did that go all the way through to internal affairs?

A. Yes, sir.

(Short recess taken.)

MR. FEINSTEIN: Would you read back the last question and answer.

(Question and answer read back.)

Q. Is that the only time you have been disciplined by the Pennsylvania State Police?

A. In that manner, yes.

Q. When you say "in that manner," what do you mean?

A. Well, for instance, if I would do a report incorrectly, I would get a discrepancy

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notice or something saying it was incorrect. I have received things such as that.

Q. Do you consider that a disciplinary reprimand?

A. Not really but I didn't want to look like I was trying to hide anything.

Q. Trust me. I don't care about discrepancies in reports unless they were intentional. I am going to assume that you haven't intentionally done that.

A. I have not, no, sir. I have not been disciplined for anything such as that.

Q. Does the Pennsylvania State Police have like a motto of some kind, like a slogan like some police are like "To Serve and Protect"? Do the Pennsylvania State Police have anything like that?

A. Yes. I believe they have the slogan "The First and the Finest."

Q. The First and the Finest. I want to talk about your training a little bit more. While you were in training and on the job, were you trained in how to identify somebody who is driving a motor vehicle or operating a motor vehicle under the influence of alcohol or other forms of intoxicants?

A. Yes.

Q. Did you have formal training on that in the Academy?

A. I had some in the Academy, and I took a class I believe in 1997 NHTSA, National Highway Traffic Safety Administration, approved.

Q. What are the types of things you look for when you suspect somebody is driving a vehicle under the influence of alcohol?

A. While they are still driving?

Q. I know that is not exactly the facts of this case. Let's focus actually on a fact pattern that is similar to this case.

For the purposes of my question we will make certain assumptions, and we are not talking specifically about my client.

If you would come across a vehicle that is stopped and there are people inside sleeping such as happened here, what would you be looking for under those circumstances to see if in your estimation somebody was driving a vehicle or operating a vehicle while they are intoxicated?

A. Signs would include bloodshot eyes, slurred speech, poor coordination, short-term memory loss, odor of alcoholic beverages, any indication of drug use or paraphernalia, including pill bottles or pipes, something along those lines, difficulty in retrieving documents, not able to divide attention between basic and difficult tasks.

Q. Would you also include things such as dishevelled clothing and --

A. Yes.

Q. -- disorientation?

A. Yes.

Q. What are your instructions or what is your understanding that you are supposed to do if you come across somebody who is asleep in a car and you suspect they are intoxicated?

A. The first thing we do would be to position my patrol vehicle in a way to make the scene as safe as possible.

Q. Let me stop you there. What do you mean by that?

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A. Well, I wouldn't want traffic to come along and have an accident occur or someone get hit by a passing motorist.

Q. What are you doing as far as your car is concerned? Pulling it off to the side of the road?

A. Depending on the location of the vehicle, I would put it in a position that would basically leave an area that would be blocked from a vehicle coming from behind or something to leave a safe area in front.

Q. So an oncoming vehicle would have to go around your car so there would not be any problem with any pedestrian in the area of the stopped vehicle?

A. Yes.

Q. I lost my thought pattern.

MS. LYNCH FRIEDLINE: Where were we on the question?

Q. The question as I recall it was what is it your understanding you are supposed to do if you suspect that somebody is under the influence if they are in a stopped vehicle?

A. I would, of course, approach the

vehicle and try to make contact with anyone. If they were asleep, I would try to wake them.

I would try to ascertain if we have a situation where someone was just tired, if they were intoxicated, if they are under the influence of some type of controlled substance or possibly having some type of medical emergency such as diabetes, sugar shock, something along those lines.

Once I rule out that there is no medical needs at the point, then, I would try to differentiate between being tired or being intoxicated or under the influence, looking for various signs of intoxication or evidence of intoxication, empty beer cans, beer bottles, whiskey bottles, something along those lines.

If I have reason to believe there is some sort of intoxication, then, at that point I would, of course, at some point while I am doing these other tasks be looking for identification of the occupants, vehicle registration, insurance, that type of documentation.

Then eventually I would begin, if I

believed there was some type of intoxication, to go through a battery of tests to try to determine what that intoxication level might be, if it was within legal ranges over the legal limit.

Q. Let's break that down a little bit. Is it fair to say when you are talking about trying to determine whether somebody is intoxicated or not, you are looking at the visual cues that you discussed a few minutes ago, disorientation, bloodshot eyes, the aroma of alcohol and things of that nature that you just discussed before to make a preliminary determination in your mind as to whether this person might be intoxicated? Is that a fair statement?

A. I believe so, yes.

Q. Is it fair to say that once you have made a determination that you believe it is possible the person is intoxication, are those tests commonly known as field sobriety tests?

A. Yes.

Q. In your capacity as a trooper, is it fair to say that you have made some arrests for

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DUI other than the one that was made on February 22, 2003?

A. Yes.

Q. Can you estimate how many you had made prior to that date or would it be in the hundreds or too high to count?

A. Prior to that date, it would be, I would estimate, probably over 200.

Q. In the course of the 200 DUIs, assuming that a field sobriety test is appropriate under the circumstances, do you do the same field sobriety test every time?

A. Yes. There are four standard field sobriety tests we are trained to use. For instance, I have had people in a wheelchair that, obviously, can't do one like stand, walk and turn, and they don't have enough lung capacity to use a breath machine. I might use something out of the norm then, but that is unusual.

Q. Can you describe the four tests for me?

A. The first test I would use would be the horizontal gaze nystagmus test which is used to look for nystagmus in a person's eyes.

Q. What is the next one?

A. The next one is the walk and turn and the one-leg stand test which are physical divided attention tests, what they call psychomotor tests.

The last test, if I have it available, would be to use a preliminary breath testing machine which would possibly confirm to me the validity of my prior three tests.

Q. Now, the preliminary breathalyzer test, to your knowledge is that admissible evidence in court on a DUI case?

A. In a trial situation I believe it is admissible for use of probable cause.

Q. In your experience prior to February 22, 2003, did you ever come across somebody who was so intoxicated that you did not feel it was even necessary to either do field sobriety tests or what is called a preliminary blood test, a PBT?

Have you ever come across anybody who you felt was so intoxicated that you didn't feel it was necessary to do a field sobriety

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test or a PBT?

A. I can't say for certain. There are times when I haven't done field sobriety tests because they weren't capable of doing them. I don't recall on all the situations if I had a PBT available or not.

Q. We will talk more about the PBT in a few minutes. Let's go back to the field sobriety test. It is your testimony there are times when you did not do a field sobriety test before arresting on a DUI?

A. There are times I haven't done them -- it is not I just go up and say, "This is it. You are under arrest." There is a period of explanation and to see if they are capable of doing them.

At some point during the test, they can be terminated. I have had people as far as say on the one leg stand where we get to one or two seconds. They have tried several times. It is not worth going on with this test any further at that point.

Q. Did you ever make a determination that you recall in any of your prior DUI cases

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where you felt it was unsafe for an individual to do a field sobriety test for any reason?

A. You mean prior to them attempting them?

Q. We will break it down into two different categories. In your experience prior to February 22, 2003, did you ever have a situation where you felt it was unsafe for the person to do the field sobriety test at all based upon the level of intoxication or other circumstances that may be present at the time?

A. I don't believe so.

Q. Prior to February 22, 2003, did you ever feel it was unsafe for somebody to do a field sobriety test or make that determination while they were doing the field sobriety test?

A. Yes.

Q. Can you recall any specific circumstances under which you made that determination?

A. I remember occasions where people were attempting to do the walk-and-turn test, which is commonly known as the heel-to-toe test, where they continued stumbling to the

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side, and I would be afraid they would step into traffic or fall into something, so I would terminate the test prior to its completion.

Q. How would you terminate the test?

A. I would just tell them to stop and move to the side of the road or between the vehicles or depending on the circumstances of how we were situated to a safe area and then I would go on to the next test.

Q. Did you ever physically stop a person from doing a field sobriety test because you felt it was dangerous, where you actually had to touch the person or grab the person and get them to stop doing it?

A. I don't recall any instances off the top of my head.

Q. Are you familiar with a portion -- I think it is in the Criminal Code -- called public intoxication?

A. Yes, sir.

Q. Are you familiar with what the definition of public intoxication is?

A. To the best of my recollection, it is worded something along the lines of a person

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who is manifestly under the influence of intoxicating beverage or substance to a point where they would be a hazard to themselves or the public.

Q. That is good because that is actually an almost quote as to what the statute is. I am impressed.

I want to start to focus your attention on the events of February 22, 2003. Actually, let's go back to that statute for a second.

What is your understanding or your belief as to somebody who is so intoxicated or the level of intoxication they are a hazard to themselves?

MS. LYNCH FRIEDLINE: This is in connection with the statute on public intoxication?

MR. FEINSTEIN: Yes. I am going back to that.

Q. What is your understanding as to what that means?

A. A person who using poor enough judgment that they are placing themselves in

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harm's way, perhaps stumbling down the middle of the road while there is traffic, continually falling over, engaging in some activity.

We had a guy trying to ride a land luge, like a toboggan-type thing, down a busy hill on a Friday night who ended up actually crashing at the bottom into a bridge abutment.

I would think anything like that could be reasonably presumed to result in significant harm.

Q. I want to, if we can, focus on one aspect of what you said which was falling over, stumbling, falling over.

Do you have any instructions or training in what you are supposed to do if you come across somebody who is so intoxicated that there is a risk of them falling down?

MS. LYNCH FRIEDLINE: Are we on public intoxication or DUI?

MR. FEINSTEIN: We have been concentrating on the public intoxication statute because the DUI statute has a different standard.

MS. LYNCH FRIEDLINE: I just

want to make sure I am on the right vein.

A. I don't think specifically it addresses the issue of falling down; but if a person is publicly intoxicated, you would remove them from the situation and release them to a person over the age of 18 who is not intoxicated themselves if they are willing to take possession of them.

The other option would be to take them before a district judge for immediate preliminary hearing if you were so inclined to charge them with the statute.

Q. Do you believe if you come across a person under those circumstances that you have an obligation to take them out of the position of danger and put them into a position of safety?

A. Ultimately, yes.

Q. One question about the PBT and then we are going to head to February 22, 2003. Can a PBT be given while a person is seated?

A. Yes.

Q. Do you have any specific recollection of the events of February 22,

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2003, as they relate to William Robert Bill?

A. Yes.

Q. Based upon recollection, actual recollection you have of the events or based upon a review of documents you did in preparation for the deposition?

A. Some of each.

Q. May I ask what you reviewed for the purposes of the deposition?

A. I read over my intoxication report and reviewed the videotape.

Q. You do have an independent recollection of that night?

A. Yes.

Q. Were you alone or were you with somebody else that night?

A. I was with Trooper Dennis.

Q. You were in the same patrol car?

A. Yes.

Q. Who was driving?

A. I believe I was.

Q. How was it that you were called to the scene of where Mr. Bill was resting?

A. Somebody called either the 911

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center or our station directly. I am not sure. Then we were dispatched to that location from whoever was working the desk that night.

Q. So you were actually in the barracks when you got a call then?

A. I don't know.

Q. The patrol car that you were in that night, was it equipped with a camera?

A. Yes.

Q. What kind of camera -- it doesn't matter what kind of camera it was.

When you got to the scene, what did you find?

A. I found a truck in a ditch. It appeared that it had come to a T intersection and made a right turn, but it made the right turn prior to reaching the intersecting roadway and turned into a snowbank.

Q. When you observed that, what did you do next?

A. Activated the camera and approached the vehicle and tried to make contact with the occupants.

Q. Which side of the vehicle did you go

to?

A. The driver's side.

Q. Did you look inside the vehicle?

A. Yes.

Q. What did you see?

A. I saw two occupants that appeared to be asleep, one laying on top of the other.

Q. Did Trooper Dennis go to the other side of the vehicle?

A. Yes.

Q. What did you do when you observed two people in the vehicle sleeping?

A. I tried to make contact with the person that was in the driver's side. I don't remember if I tapped on the window or how I tried to wake him first, but I did eventually make contact with him.

Q. Is that the person we are talking about today, Mr. Bill?

A. Yes.

Q. You woke him up?

A. Yes.

Q. When you woke him up, how did he appear to you?

A. A little disoriented, confused.
Q. What was his clothing like?
A. Nothing particularly unusual that I recall.
Q. Did you look at his eyes?
A. I believe I did.
Q. What did you see?
A. Could I refer to my report?
Q. Absolutely.
MR. FEINSTEIN: Why don't we mark that as Sternby Exhibit No. 1. That is a copy?
MS. LYNCH FRIEDLINE: That is a copy.
MR. FEINSTEIN: We will attach that as an exhibit.
(Sternby Exhibit No. 1 was marked for identification.)
A. I have noted on here his eyes were bloodshot.

BY MR. FEINSTEIN:

Q. You are looking at your report. I have a copy of the first page of your report. Will you just confirm that is a copy of the same report?

A. Yes.

Q. Now, there are portions of the report numbered 28 through 35. All of those are related to the contact with Mr. Bill; is that correct?

A. Yes.

Q. Are all of those notations made before you attempted any field sobriety tests?

A. No, sir.

Q. These notations were observations that you made before and during any attempted field sobriety tests; is that fair to say?

A. These would have been before and during the field sobriety tests. I wouldn't have completed this form until after the field sobriety tests were completed.

Q. I am right on the numbers. No. 28, "How were you contacted?" You said it was on routine patrol. Does that refresh your recollection as to whether you were in the barracks or on patrol at the time you got the call?

A. It doesn't improve my memory on it.

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I believe I was at the station because it was near the end of the shift, but I can't say for sure.

Q. "No. 29, Strikes object," and you have that box marked; and next to it it says, "Snowbank"?

A. Correct.

Q. Is that in reference to the vehicle, that it was in a snowbank?

A. Right. That would be the object that it struck.

Q. "No. 30, Odor of alcoholic beverage on breath." You have indicated that was strong. Do you have a recollection today as to whether you made that observation? Was it when you woke up Mr. Bill or after you started doing the field sobriety tests?

A. It would have had to have been, I would assume at least to some extent, after he was removed from the vehicle because when there is another person there I can't distinguish if there is an odor of alcoholic beverage necessarily whose breath it was coming from.

I might have noticed -- I am sure I

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noticed in the vehicle. I don't have any independent recollection of it right now -- that there would have been an odor of alcoholic beverage in the vehicle. I would also have to confirm that after he exited that vehicle.

Q. You would have confirmed that before you started any field sobriety test because that is one of the things you would be looking for; right?

A. Yes.

Q. The next one, "Action," you marked slow/sluggish and sleepy. Do you know if you made those observations before you began the field sobriety tests or after you started the field sobriety tests?

A. Certainly, sleepy would have been beforehand because that was one of the first things I observed.

The slow and sluggish would have been probably during the entire time period I made contact with him until we terminated.

Q. Also you marked swaying, falling and difficulty with cards. We will get to the difficulty with cards in a second.

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The swaying, was that before or during the field sobriety tests or both?

A. I believe that was during from what I saw in the videotape yesterday.

Q. And falling would be?

A. That would be the very last thing that he did.

Q. What does difficulty with cards mean?

A. Difficulty in producing driver's license, registration, insurance card.

Q. Would that have been before you attempted the field sobriety tests?

A. Yes.

Q. Next you have unsure of footing. Was that before or after the field sobriety tests?

A. I believe that was in conjunction with the swaying portion I saw in the videotape. Probably unsure footing a little bit when he first got out of the truck also.

Q. The last comment, leans/holds vehicle and staggers/vehicle. Same question. Is that before or after the field sobriety

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tests, the attempted field sobriety tests?

A. There again, the swaying, the unsure footing, staggers and stumbles, I remember seeing that on the videotape. The leans on/hold on vehicle would have been before the field sobriety tests based on what I saw in the videotape yesterday.

Q. No. 32, Dress. You marked dirty and dishevelled. Is it fair to say you observed that before he attempted the field sobriety test; is that correct?

A. Yes.

Q. Attitude indifferent, would that be before or after?

A. Both.

Q. Section 34, Speech, you have marked incoherent and slurred. Would you say that was before or after the field sobriety tests?

A. First, I don't know if we really have an after the field sobriety tests because I was still in the process of getting a preliminary breath testing machine when he fell down. Before and during would be the only time periods.

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The incoherent, I don't recall exactly at what point I made that determination. The slurred would have probably be the entire time I was in contact with him.

Q. You also marked that he had bloodshot eyes. Was that based upon the initial observation after he woke up before he started the field sobriety test?

A. I believe so.

Q. Then we actually get down into the field sobriety tests. It says he refused to try the one leg stand; is that correct?

A. Yes.

Q. Could not follow instructions on the walk and turn?

A. Correct.

Q. And attempted on the horizontal gaze -- can you say that for me?

A. Nystagmus.

Q. -- nystagmus -- I can't read the bottom. It says not applicable?

A. Not applicable for the horizon gaze nystagmus test. At the bottom I wrote, "Attempted to get BPT and he fell."

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Q. Why was the horizontal gaze not applicable? Did you just decide not to do it?

A. I don't know if I decided not to do it or if I was going to do it later. I don't remember exactly what my thought process was on that at the time.

Q. Is it fair to say that you were reasonably certain by the time you got to the third test that Mr. Bill was too intoxicated to drive a vehicle safely?

A. What test are you referring to?

Q. The three tests. You had the one leg stand test, the walk and toe, and the horizontal gaze test.

By the time you got to the horizontal gaze test, were you fairly certain he was too intoxicated to drive a vehicle safely?

A. Fairly safe, yes.

Q. Is it fair to say before you started the field sobriety tests you were pretty certain he was too intoxicated to drive a vehicle safely?

A. I don't know if that would be a fair

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statement. For one, I have had instances where I have found people sleeping behind a vehicle that had been drinking and when you first awake them, they are disoriented and confused and after you have had them up for five minutes or so, they get their wits about themselves and become perfectly capability of doing things beyond that which has resulted in them not being arrested.

The other thing is with the way I do the test I don't generally form an opinion until I have completed all the tests because if I have already formulated my opinion there is no point in continuing on with the test further.

Q. Explain to me the circumstances of what happened when Mr. Bill fell. Describe for me what happened.

A. I had completed with the one leg stand and the walk and turn test to the best of what I felt was applicable at that time, and I was taking him to the front of the patrol car area, an area of safety and a place where also he could be easily observed.

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Q. Did you say you were taking him to the police car?

A. To the front of the police car.

Q. When you say you were taking him, what do you mean you were taking him?

A. Escorting him, walking with him.

Q. Were you touching him, holding his arm?

A. I don't believe I was.

Q. So you were walking next to him?

A. Actually, from what I saw in the videotape, I was walking a little bit in front of him.

Q. To the side of him and a little bit in front?

A. Correct, the area where I wanted him to go.

Q. Why did you want him to go to the front of the police car?

A. I wanted him to wait there. It would be an area that would be in reasonable proximity to where I intended to be. It was an area where there wouldn't be hazards from any traffic that could come by. It was also an

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area where he would be in view of the camera to observe his actions.

Q. You were going to go into the patrol car to get the test, the PBT; correct?

A. Yes.

Q. And you were going to leave Mr. Bill alone in front of the car, the patrol car; is that correct?

A. Yes.

Q. What was to prevent Mr. Bill from wandering into the middle of the street from in front of the patrol car if you were going to get the PBT?

A. Just my instructions.

Q. You have already indicated that Mr. Bill wasn't following your instructions or refusing to follow your instructions; correct?

A. He was having difficulty understanding the instructions.

Q. So what made you believe that asking him to stand in front of the police car would be instructions that he would follow?

A. He hadn't shown me any indications that he was going to attempt to run away. He